

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF DELAWARE

3 Case No. 01-01139(KJC)

4 (Jointly Administered)

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6 In the Matter of:

7

8 W.R. GRACE & CO., ET AL.,

9 Reorganized Debtors.

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11 - - - - - x

12 ADV. PROC. NO.: 14-50867 (KJC)

13 RALPH HUTT AND CARL OSBORN,

14 Plaintiffs,

15 v.

16 MARYLAND CASUALTY COMPANY,

17 Defendant.

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1 United States Bankruptcy Court
2 824 North Market Street
3 Wilmington, Delaware
4

5 March 4, 2015
6 9:59 a.m.
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8 B E F O R E :

9 HON KEVIN J. CAREY

10 U.S. BANKRUPTCY JUDGE
11

12 ECR OPERATOR: AL LUGANO
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1 Amended Debtors' Twenty-Fifth Omnibus Objection to Claims
2 (Substantive and Non-Substantive) [Filed: 8/26/08] (Docket
3 No. 19378)

4
5 Reorganized Debtors' Objection to the Remaining Claims of
6 the Internal Revenue Service (Substantive) [Filed: 4/22/14]
7 (Docket No. 32036)

8
9 Debtors' Objection to the Proof of Claim Filed by Norfolk
10 Southern Railway Company [Filed 7/20/09] (Docket No. 22553)

11
12 Anderson Memorial Hospital's Motion to Alter or Amend Order
13 Denying Motion for Class Certification and for Entry of
14 Scheduling Order and Granting Related Relief [Filed 3/5/14]
15 (Docket No. 31812)

16
17 Motion Requesting Entry of an Order: (A) Filing Joint
18 Defense Agreement Under Seal; and (B) Applying the
19 Protective Provisions of Fed. R. Evid. 502 Thereto [Filed:
20 2/3/15] (Docket No. 32499)

1 Thirty-Sixth Omnibus Objection to Certain Claims Filed
2 Regarding Prepetition Litigation Captioned, Estate of
3 Jeffrey B. Chwala, et al., vs. TEC (Thermal Emission
4 Control), et al., Case No. 2002cv000495 (Eau Claire County
5 Wisconsin 2002) (Substantive Objection) [Filed: 1/30/15]
6 (Docket No. 32496)

7
8 Thirty-Seventh Omnibus Objection to Certain Claims Filed
9 Regarding Prepetition Litigation Captioned, TIG Insurance
10 Company v. Gary Smolker, et al., Case No. BC 173952 (Los
11 Angeles County Sup. Ct.) (Janavs, J.) (Substantive
12 Objection) [Filed: 1/30/15] (Docket No. 32497)

13
14 Adversary Complaint (Ralph Hutt and Carl Osborn v. Maryland
15 Casualty Company [Filed: 6/13/11] (Adv. Pro. No.: 14-50867,
16 Docket No. 1)

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25 Transcribed by: Sherri L. Breach, CERT*D-397

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P R O C E E D I N G S

THE CLERK: All rise.

Be seated, please.

THE COURT: Good morning, all.

(A chorus of good morning)

MR. O'NEILL: Good morning, Your Honor. James
O'Neill, Pachulski, Stang, Ziehl & Jones on behalf of the
reorganized debtors, Grace.

Your Honor, we have a few items on our agenda
today. Thank you very much for considering Number 5 on the
agenda, and I do see that an order was entered on that.

Next, Your Honor, Item Number 6 and 7 are two
omnibus claim objections related to long-standing State
Court litigation. Item Number 6 is the thirty-sixth omnibus
objection filed regarding pre-petition litigation from the
estate of Jeffrey Chwala.

Your Honor, with this objection, this objected to
four claims which have been filed based on long-standing
State Court litigation. We filed the objection and served
the objection. We filed with an alternative form of order
depending on whether there were any responses or whether
there weren't responses.

Your Honor, there were no responses to this
objection. Given the way that the objection deadline fell,
we couldn't file a CNO because it was just too close. So

1 we've prepared a revised form of order which grants the
2 relief requested regarding disallowance of the four claims
3 and I am -- I have that here and I'm happy to hand it up to
4 Your Honor if Your Honor will entertain it.

5 THE COURT: If you please.

6 (Pause)

7 MR. O'NEILL: May I approach?

8 THE COURT: You may.

9 (Pause)

10 MR. O'NEILL: Thank you very much, Your Honor. I
11 have handed up a clean and a blackline with the order. And
12 as the Court can see from reviewing the blackline we've
13 taken out the alternative language and are requesting that
14 the Court enter orders disallowing the four claims. There's
15 an exhibit attached to the form of order which identifies
16 the four claims.

17 THE COURT: All right. Let me ask for the record
18 if anyone else wishes to be heard in connection with this
19 matter?

20 I hear no response.

21 I've reviewed the submissions and don't have any
22 questions. I'm prepared to grant the relief that's been
23 requested.

24 That order has been signed.

25 MR. O'NEILL: Thank you very much, Your Honor.

1 Moving to Item 7 on the agenda, this was a similar
2 situation, long-standing State Court litigation, and we
3 filed the motion objecting to claims, again, in the
4 alternative depending on whether there was a response or
5 not. In this instance, Your Honor, we did file -- we did
6 receive responses from Mr. Smolker. Mr. Smolker has
7 consented to the relief that we've requested in the
8 alternative for leave to allow the pending litigation to
9 proceed.

10 THE COURT: He seems very happy with that result.

11 MR. O'NEILL: He does seem very happy with it.

12 So in this instance, Your Honor, we revised the
13 order to remove the disallowing language and to reflect
14 leave from this Court to allow the State Court litigation to
15 proceed. And I have a revised form of order and a
16 blackline.

17 May I approach and hand it up?

18 THE COURT: You may.

19 (Pause)

20 THE COURT: Thank you.

21 I'll ask for the record if anyone else wishes to
22 be heard in connection with this matter.

23 I hear no response.

24 I've reviewed the submissions, don't have any
25 questions. And it appears from the response that the relief

1 that's requested has been consented to. That order has been
2 signed.

3 MR. O'NEILL: Thank you very much, Your Honor.

4 Moving to Item 8 on our agenda, Your Honor, this
5 is a pretrial conference in Adversary Proceeding Number 14-
6 50867, Ralph Hutt and Carl Osborn versus Maryland Casualty
7 Company.

8 Your Honor, Grace is not a party to this action,
9 but counsel for the parties is in the courtroom and I'll
10 yield the podium to them for the purpose of the pretrial
11 conference.

12 THE COURT: Very well.

13 MR. BUSENKELL: Good morning, Your Honor. Michael
14 Busenkell of Gellert, Scali, Busenkell & Brown on behalf of
15 the plaintiffs. With me in the courtroom today is Mr.
16 Daniel Cohn of the Murtha Cullina Law Firm. I will turn the
17 podium over to him for purposes of the pretrial conference.

18 THE COURT: Very well.

19 MR. COHN: Good morning, Your Honor. Daniel Cohn
20 for the plaintiffs in the adversary proceeding.

21 This is perhaps not your usual adversary
22 proceeding.

23 THE COURT: No. I read the complaint.

24 MR. COHN: But the good thing is, Your Honor, that
25 Mr. Longosz, representing Maryland Casualty, which is the

1 defendant, and I are in discussions and I think we're --
2 we're headed toward a consensual procedural order on how we
3 would like to proceed.

4 The -- we both believe that it is likely that the
5 case can be disposed of on cross-motions for summary
6 judgment.

7 THE COURT: I figured. I was actually a bit
8 surprised that an answer was filed instead of a motion to
9 dismiss, but I suppose there's a reason for that.

10 MR. COHN: Well, we are proceeding with some
11 informal discovery and I think that Maryland Casualty just
12 wants to confirm some facts about the particular plaintiffs.
13 But I think I'll be able to satisfy them in that regard. I
14 need some insurance policies from them. I think they're
15 going to be able to supply those.

16 So we would expect that after, you know, some
17 short informal discovery that we'll have all that we
18 respectively need in order to proceed by cross-motions for
19 summary judgment. And we've agreed that the deadlines for
20 those motions, with your consent, Your Honor, would be June
21 5th.

22 The -- and, of course, there would then be an
23 opportunity for each of us to respond to the other side's
24 motion.

25 THE COURT: So that's fine so long as the parties

1 conclude their discovery by that time so that I'm not faced
2 with any argument that the summary judgment motion stage
3 that there's -- there's more yet to be done or there's
4 something lacking. I'm assuming you're teeing it up in that
5 way.

6 MR. COHN: Well, yes and no. There are two
7 reservations on that.

8 One is that just to make sure that we each get
9 what we need in informal discovery, we're at least in theory
10 reserving the right to say there's some unresolved issue of
11 material fact. But we both expect that we'll be able to get
12 what we need in informal discovery so that that won't be a
13 problem.

14 The second reservation, Your Honor, is that if you
15 were -- we don't think it likely, but if you were to deny
16 both cross-motions and say that in your view there was some
17 issue of fact that needed to be resolved, then we're open to
18 the full -- full pretrial process at that point which would
19 include discovery, another round potentially of dispositive
20 motions and so on.

21 But with that having been said, we think the
22 likely course here is going to be that we are able to
23 present you with cross-motions that you will feel that you
24 can grant or deny without -- without needing to reserve on
25 issues of fact.

1 THE COURT: All right. Have the parties discussed
2 whether I can enter a final order on this matter or whether
3 it's one in which I need to make proposed findings and
4 conclusions for the benefit of the District Court.

5 MR. COHN: We have not, Your Honor.

6 THE COURT: Would you do so?

7 MR. COHN: Yes, Your Honor.

8 THE COURT: And if you can agree, that's fine. If
9 not, please let me know that as well.

10 MR. COHN: All right. With summary judgment, Your
11 Honor --

12 THE COURT: Because as you know it matters not to
13 me. It's just -- it's just how I title the --

14 MR. COHN: Right.

15 THE COURT: -- the decision, that's all.

16 MR. COHN: I realize that. And it's -- it's
17 entirely a technical matter in the sense that since a
18 summary judgment is a ruling of law anyway, there's no
19 difference in the standard whereby the District Court would
20 rule anyway.

21 So -- but as -- just as a technical matter we'll
22 make sure that we dispose of that in some clear way so that
23 the issue is not reserved by anybody.

24 THE COURT: Okay.

25 MR. COHN: Great.

1 THE COURT: Thank you.

2 MR. COHN: And then the only other thing I wanted
3 to add is that we are in -- and we've agreed to disagree in
4 the sense that we don't -- we don't think that mediation
5 would be productive. It's this -- we've long known about
6 this dispute. It was, in fact, talked about in the context
7 of confirmation of the plan. And these are -- while these
8 are two plaintiffs who are suing, there are others who have
9 similar claims.

10 And so this is a pretty big deal for both the --
11 this group of plaintiffs and also for Maryland Casualty
12 Company. And also I might -- I understand that CNA, another
13 insurance company, is appearing telephonically here. And so
14 they may have something to say about the potential affect on
15 them. So it's a big deal, Your Honor, and I -- we don't
16 think that mediation would be productive.

17 THE COURT: All right. You've anticipated one
18 other issue that I did want to talk about. And normally, as
19 you might know, I do press the parties to go to mediation.
20 But based on what you're telling me I'm not inclined to do
21 that at this point. But I reserve the right --

22 MR. COHN: All right.

23 THE COURT: -- to twist an arm or two at some
24 point down the road if that becomes appropriate.

25 MR. COHN: Terrific.

1 THE COURT: All right. Thank you.

2 MR. COHN: Thank you.

3 THE COURT: Does the defendant wish to be heard?

4 MR. WISLER: Yes, Your Honor. Good morning.

5 Jeffrey Wisler from Connolly Gallagher on behalf of Maryland
6 Casualty Company.

7 Your Honor, I want to introduce my co-counsel,
8 Edward Longosz from Eckert Seamans. Mr. Longosz's pro hac
9 motion, I think, was granted when I was in my 30s, quite a
10 while ago in this case.

11 (Laughter)

12 MR. WISLER: Before Mr. Longosz comes to the
13 podium, I wanted to point out that the complaint did not
14 include the allegation about core, non-core and final
15 orders. Our answer did and we did -- we believe the
16 Bankruptcy Court has jurisdiction to enter a final order and
17 we consented to that in our answer.

18 THE COURT: All right. Thank you.

19 MR. LONGOSZ: Your Honor, thank you. Ed Longosz
20 on behalf of Maryland Casualty.

21 I echo the comments made by counsel with respect
22 to the schedule. One of the things, so the Court knows,
23 with respect to the informal discovery is that we are
24 reserving the right, and the parties have done that, to
25 utilize the hearing transcripts and discovery and documents

1 and exhibits that were proffered to the Court and accepted
2 by the Court in the underlying confirmation hearing. And I
3 think that's how we're able to package this in a neat form
4 and in a timely manner such that we don't need six months or
5 nine months out to be able to do this and not re-invent the
6 wheel.

7 THE COURT: All right. Well, make sure those are
8 -- since I wasn't the judge at the time -- included in the
9 notice of completion of briefing binders.

10 MR. LONGOSZ: We will make sure. Obviously, Your
11 Honor.

12 And then the only other thing is knowing that we
13 do -- the dispositive motion may or may not be dispositive
14 of all issues, and while there's wishful thinking on both
15 our parts we're going to defer to the Court to review the
16 briefs and see if anything survives from this and then have
17 that period of time.

18 So while this may be a dispositive motion and I
19 could dispose of the case, there may be an additional
20 dispositive motion down the road if the Court feels that
21 there's some other issues that have to be resolved either
22 through discovery or otherwise.

23 THE COURT: All right. Well, so that you know my
24 practice is to, once the papers are finished and submitted,
25 then schedule a hearing for oral argument, and whether the

1 parties ask for it here or not I anticipate that I will
2 given the nature of the dispute. And I pick that date to
3 give me enough time to prepare for the argument. So we'll
4 address that when the time comes.

5 In terms of the order I'll await submission of an
6 order, proposed order under certification and, you know,
7 within reason I'll accommodate the parties' request.

8 Okay. Is there anything more to be discussed in
9 that -- in this matter?

10 MR. LONGOSZ: Judge, do you need to see us again
11 at the next scheduled omnibus or the one thereafter in June,
12 just from a catch up standpoint so to let the Court know if
13 there's any issues or any things that come up?

14 THE COURT: Let's put it this way. If you feel
15 like there's a need to talk to me or if I feel the same,
16 I'll let you know. But --

17 MR. LONGOSZ: Thank you.

18 THE COURT: -- if everything is going along
19 swimmingly you're welcome not to schedule this for a status.

20 MR. LONGOSZ: Thank you.

21 THE COURT: But if you need it, please do so.
22 Is there anything further for today?

23 MR. O'NEILL: No, Your Honor. I would note that
24 we did receive a message regarding the date change from
25 April 14th to April 15th for our next hearing date and we

1 have confirmed with the Anderson Memorial parties who had a
2 motion that has been scheduled for quite some time. But
3 they are amenable to that time, and so -- and I saw Your
4 Honor also entered the order on the Anderson Memorial
5 stipulation and in the order you corrected the time to the
6 -- or the date to the 15th.

7 THE COURT: That's right --

8 MR. O'NEILL: So --

9 THE COURT: -- at 10:00.

10 MR. O'NEILL: Correct. So the next time that we
11 are before you will be April 15th at 10:00 a.m. and that
12 will be the day that the Anderson Memorial motion will be
13 heard.

14 THE COURT: I shall await the day with great
15 anticipation.

16 (Laughter)

17 MR. O'NEILL: Well, we appreciate Your Honor's
18 efforts with scheduling on that. There are a number of
19 parties involved, so luckily it worked out.

20 And that's all we have for today.

21 THE COURT: All right. Thank you all very much.
22 That concludes this hearing. Court will stand adjourned.

23 (A chorus of thank you)

24 (Whereupon, these proceedings were concluded at 10:13
25 a.m.)

I N D E X

RULINGS

DESCRIPTION

PAGE

LINE

Thirty-Sixth Omnibus Objection to Certain
Claims Filed Regarding Prepetition Litigation
Captioned, Estate of Jeffrey B. Chwala, et
al., vs. TEC (Thermal Emission Control), et
al., Case No. 2002cv000495 (Eau Claire County
Wisconsin 2002) (Substantive Objection)

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Thirty-Seventh Omnibus Objection to Certain
Claims Filed Regarding Prepetition Litigation
Captioned, TIG Insurance Company v. Gary
Smolker, et al., Case No. BC 173952 (Los
Angeles County Sup. Ct.) (Janavs, J.)
(Substantive Objection)

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C E R T I F I C A T I O N

I, Sherri L. Breach, CERT*D-397, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sherri L
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DATE: March 5, 2015